

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**OLLIE GREENE, *et al.*,**

**Plaintiffs**

**v.**

**TOYOTA MOTOR CORPORATION, *et al.*,**

**Defendants.**

§  
§  
§  
§  
§  
§  
§  
§

**CAUSE NUMBER: 3:11-cv-0207-N**

**APPENDIX IN SUPPORT OF THE TOYOTA DEFENDANTS'  
MOTION TO EXCLUDE UNTIMELY DISCLOSED  
FILE MATERIALS AND DATA OF PLAINTIFFS' EXPERT JEFF G. VICK**

TO THE HONORABLE COURT:

COME NOW, Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively “the Toyota Defendants”) and would respectfully show the Court as follows:

<b>EXHIBIT</b>	<b>DESCRIPTION</b>	<b>PAGE NUMBERS</b>
Exhibit A	Plaintiffs' Responses to Toyota Motor Corporation's First Request for Production	1-4
Exhibit B	December 9, 2013 letter from Toyota Defendants to Plaintiffs	5
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Respectfully submitted,

/s/ Kurt C. Kern

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(972) 616-1700

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**ATTORNEYS FOR DEFENDANTS  
TOYOTA MOTOR CORPORATION,  
TOYOTA MOTOR ENGINEERING &  
MANUFACTURING NORTH AMERICA,  
INC., AND TOYOTA MOTOR SALES,  
U.S.A., INC.**

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 28<sup>th</sup> day of February, 2014.

/s/ Jude T. Hickland

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**OLLIE GREENE, Individually as the surviving parent of WYNDELL GREENE, SR., WILLIAM GREENE, as the Administrator of the Estate of WYNDELL GREENE, SR., and MARILYN BURDETTE- HARDEMAN, Individually and as the surviving parent of LAKEYSHA GREENE,**

**Plaintiffs,**

**V.**

**TOYOTA MOTOR CORPORATION,  
TOYOTA MOTOR MANUFACTURING  
NORTH AMERICA, INC., and  
TOYOTA MOTOR SALES USA, INC.,**

## Defendants.

**CAUSE NUMBER: 3:11-cv-0207-N**

## JURY TRIAL DEMANDED

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO TOYOTA MOTOR CORPORATION'S FIRST REQUEST FOR PRODUCTION TO PLAINTIFFS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs serve their Objections and Responses to Defendants' First Request for Production to Plaintiffs as follows.

## GENERAL OBJECTIONS

1. Plaintiffs object to each and every one of Defendants' discovery requests to the extent they request information or documents protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or immunity from disclosure. Production of information or documents subject to such privilege, or protection in response to any request is inadvertent and shall not constitute or be deemed to constitute a waiver of such privilege, protection or immunity.

2. Nothing contained in any response herein shall be deemed to be an admission, concession or waiver by Plaintiffs as to the relevance, materiality or admissibility of any document or information provided in response to Defendants' discovery requests.

3. Plaintiffs respond to each of Defendants' discovery requests based on the information available as of the date hereof and will produce documents in its possession, custody or control which are responsive to Defendants' discovery requests and not otherwise protected

**REQUEST NO. 52:**

The complete file of all testifying experts.

**RESPONSE:**

Plaintiffs object to this request on the basis that it is vague, overly broad and can be read to seek the production of attorney work product or other protected matter. Plaintiffs also object to this request as a premature request for expert disclosures. Subject to these objections, Plaintiffs will produce, or make available for inspection and/or copying, unobjectionable information required by FRCP 26(a)(2) that is responsive to this Request, in accordance with the Court's Scheduling Order.

**REQUEST NO. 53:**

The curriculum vitae of all testifying experts.

**RESPONSE:**

Plaintiffs object to this request on the basis that it is a premature request for expert disclosures. Subject to these objections, Plaintiffs will produce, or make available for inspection and/or copying, unobjectionable information required by FRCP 26(a)(2) that is responsive to this Request, in accordance with the Court's Scheduling Order.

**REQUEST NO. 54:**

The testifying history list and/or case list for all testifying experts.

**RESPONSE:**

Plaintiffs object to this request on the basis that it is a premature request for expert disclosures. Subject to these objections, Plaintiffs will produce, or make available for inspection and/or copying, unobjectionable information required by FRCP 26(a)(2) that is responsive to this Request, in accordance with the Court's Scheduling Order.

**REQUEST NO. 55:**

The complete file of all consulting experts whose opinions or conclusions may be relied upon by a testifying expert.

**RESPONSE:**

**REQUEST NO. 82:**

To the extent not otherwise provided in the requests above, all documents identified or referenced by you in your interrogatory answers.

**RESPONSE:**

Plaintiffs object to this request on the basis that it is vague and/or overly broad, unduly burdensome, harassing and seek information and/or material that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully Submitted,

/s/ Aubrey "Nick" Pittman

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KRISTIN KAY SCHROEDER

State Bar No. 24037452

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/s/ Daryl K. Washington

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this pleading was served upon Defendants' counsel of record on August 19, 2011 in the manner described below:

KURT C. KERN  
DAVID P. STONE  
CRAIG D. DUPEN

**BOWMAN AND BROOKE, LLP**  
2711 North Haskell Avenue, Suite 650  
Dallas, Texas 75204

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<input checked="" type="checkbox"/>	Via CMRRR
<input type="checkbox"/>	Via Telecopy [972 616-1701]
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Daryl K. Washington/ac  
DARYL K. WASHINGTON

**Bowman and Brooke** LLP

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December 9, 2013

VIA EMAIL

Mr. Aubrey "Nick" Pittman  
The Pittman Law Firm, P.C.  
100 Crescent Court, Suite 700  
Dallas, TX 75201

Re: *Ollie Greene, et al. v. Toyota Motor Corporation, et al.*, In the United States District Court  
for the Northern District of Texas, Dallas Division; Cause No. 3:11-CV-0207-N

Dear Nick:

We have had an opportunity to further review Plaintiffs' expert disclosures and reports of November 20, 2013. It is apparent that certain materials should have been, but were not produced as part of those disclosures. The Toyota Defendants therefore request that Plaintiffs produce all materials referenced in the expert reports and relied upon by Plaintiffs' experts in forming their opinions, including the Biokinetics, "2010 Toyota 4Runner Fuel Tank Evaluations" report cited by Keith Friedman and Rhoads Stephenson. Without waiving any objection to Plaintiffs' non-disclosure, we ask that Plaintiffs produce all such materials by 5:00 p.m., December 13, 2013.

Sincerely,

BOWMAN AND BROOKE LLP



Kurt C. Kern

KCK/

cc: Daryl K. Washington - Via email at [dWASHINGTON@dwashlawfirm.com](mailto:dWASHINGTON@dwashlawfirm.com)  
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## Melanie McCarty

---

**From:** Kathleen Clark <kathleen@dawson-clark.com>  
**Sent:** Friday, November 22, 2013 7:47 AM  
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**Cc:** dwashington@dwashlawfirm.com; rhowry@howrybreen.com; pfitzgerald@howrybreen.com; jcarlson@howrybreen.com; Todd.Parks@wbclawfirm.com; Ashley.delaCerde@wbclawfirm.com; Don Dawson; msharp@feesmith.com; sself@feesmith.com; jkenefick@macdonalddevin.com; 'Joseph F. Henderson'; Brian E. Mason; David Stone; Donna M. Struke; Jude T. Hickland; Mary Lindsey; Julia A Campbell; Kim Weiner; Kurt C. Kern; Jama S. Reynolds  
**Subject:** RE: November 21, 2013 correspondence regarding expert deposition schedule

Mr. Pittman:

The proposed schedule is clearly unworkable (as well as being devoid of dates for experts by name). Strick made a formal demand, according to the terms of this Court's amended scheduling order, for dates for depositions of your experts. As a courtesy, we extended the time to five days after your disclosure date. Your letter is not responsive to Strick's demand. Please provide a date for each Plaintiff expert by name, including the location. After we get these dates, we will be in a position to provide dates for Strick's experts.

We have no objection to Dallas as the location for Plaintiff's experts. However, Strick's liability experts are located in Detroit, and, accordingly, that will be the expected location for their depositions.

(Please note: this response and inquiry is without prejudice to Strick's objections to the inadequacy of Plaintiff's Rule 26 expert disclosures and any relief which may be sought in this regard).

Kathleen

**Kathleen A. Clark**  
**Dawson & Clark, P.C.**  
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---

**From:** Aubrey "Nick" Pittman [<mailto:pittman@thepittmanlawfirm.com>]  
**Sent:** Thursday, November 21, 2013 4:47 PM  
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**Cc:** [dwashington@dwashlawfirm.com](mailto:dwashington@dwashlawfirm.com); [rhowry@howrybreen.com](mailto:rhowry@howrybreen.com); [pfitzgerald@howrybreen.com](mailto:pfitzgerald@howrybreen.com); [jcarlson@howrybreen.com](mailto:jcarlson@howrybreen.com); [Todd.Parks@wbclawfirm.com](mailto:Todd.Parks@wbclawfirm.com); [Ashley.delaCerde@wbclawfirm.com](mailto:Ashley.delaCerde@wbclawfirm.com); Don Dawson; Kathleen Clark; [msharp@feesmith.com](mailto:msharp@feesmith.com); [sself@feesmith.com](mailto:sself@feesmith.com); [jkenefick@macdonalddevin.com](mailto:jkenefick@macdonalddevin.com); 'Joseph F. Henderson'; 'Brian E. Mason'; 'David Stone'; 'Donna M. Struke'; 'Jude T. Hickland'; 'Julia A Campbell'; 'Kim Weiner'; 'Kurt C. Kern'; 'Jama S. Reynolds'  
**Subject:** November 21, 2013 correspondence regarding expert deposition schedule

Attached please find a copy of correspondence sent by fax to all counsel earlier this afternoon.

Regards,

Aubrey "Nick" Pittman,



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## Melanie McCarty

---

**From:** Kathleen Clark <kathleen@dawson-clark.com>  
**Sent:** Monday, December 02, 2013 6:32 AM  
**To:** Aubrey "Nick" Pittman; NLWF-Robin L. Hart  
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**Subject:** RE: Greene v Toyota: November 27, 2013, correspondence regarding scheduling expert depositions

Mr. Pittman:

It is unfortunate that Strick's and Toyota's early requests to Plaintiffs to work out a schedule for expert depositions was rebuffed. It is also unfortunate that Plaintiffs have elected to allow an entire month of the limited expert discovery period to pass before the first date provided for deposition of Plaintiffs' experts. It is not clear whether Plaintiffs are now refusing to provide experts on those dates. Given that time is short, we would appreciate it if you would confirm whether Plaintiffs will produce the experts for depositions as noticed by Toyota.

Plaintiffs' proposal to intersperse defense liability expert depositions with Plaintiffs liability expert depositions is not workable. It is not compatible with the remaining expert disclosure schedule and, in addition, Plaintiffs' liability experts have set forth overlapping subject matter and opinions. Strick will produce its expert disclosures in compliance with the scheduling order. Strick has been working on obtaining dates for depositions of its experts. We will notify you as soon as available dates can be confirmed.

This response is without prejudice to Strick's objections to inadequate Rule 26 disclosures by Plaintiffs' liability experts and any relief Strick may seek related thereto.

**Kathleen A. Clark**  
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---

**From:** Aubrey "Nick" Pittman [<mailto:pittman@thepittmanlawfirm.com>]  
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**Subject:** Greene v Toyota: November 27, 2013, correspondence regarding scheduling expert depositions

Counsel:

Please find attached a copy of correspondence sent by fax today to Kathleen Clark and Kurt Kern regarding scheduling expert depositions in this matter.

Regards,

Aubrey "Nick" Pittman,  
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JEFF G. VICK - 1/21/2014

Page 1

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

OLLIE GREENE, )  
Individually as the )  
surviving parent of )  
WYNDELL GREENE, SR., )  
WILLIAM GREENE, as the )  
representative of the )  
Estate of WYNDELL GREENE, )  
SR., and MARILYN )  
BURDETTE-HARDEMAN, )  
individually and as the )  
surviving parent of )  
LAKEYSHA GREENE, )  
Plaintiffs, )

v. )

CAUSE NO. 3-11CV-0207-N

TOYOTA MOTOR CORPORATION, )  
TOYOTA MOTOR )  
MANUFACTURING NORTH )  
AMERICA, INC., and TOYOTA )  
MOTOR SALES USA, INC., )  
VOLVO GROUP NORTH )  
AMERICA, INC., VOLVO )  
TRUCKS NORTH AMERICA, A )  
DIVISION OF VOLVO GROUP )  
NORTH AMERICA, INC., )  
STRICK CORPORATION, INC., )  
JOHN FAYARD MOVING & )  
WAREHOUSE, LLC and )  
DOLPHIN LINE, INC., )  
Defendants. )

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
JEFF G. VICK  
JANUARY 21, 2014

\*\*\*\*\*

Merrill Corporation - Dallas

800-966-4567

[www.merrillcorp.com/law](http://www.merrillcorp.com/law)

APP 12

**JEFF G. VICK - 1/21/2014**

Page 2

1 ORAL AND VIDEOTAPED DEPOSITION OF JEFF G. VICK,  
2 produced as a witness at the instance of the Defendant  
3 Toyota Motor Corporation, and duly sworn, was taken in  
4 the above-styled and numbered cause on the 21st day of  
5 January, 2014, from 9:44 a.m. to 6:28 p.m., before Julie  
6 C. Brandt, RMR, CRR, and CSR in and for the State of  
7 Texas, reported by machine shorthand, at the offices of  
8 Daryl K. Washington, PC, 325 N. St. Paul, Suite 1975,  
9 Room 105, Dallas, Texas, pursuant to the Federal Rules  
10 of Civil Procedure and the provisions stated on the  
11 record or attached hereto.

JEFF G. VICK - 1/21/2014

Page 3

A P P E A R A N C E S

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APP 14



JEFF G. VICK - 1/21/2014

Page 4

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22 VIDEOGRAPHER:

23 Kristen Geoffrion - Merrill Corp.  
24  
25

## JEFF G. VICK - 1/21/2014

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JEFF G. VICK - 1/21/2014

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1           A.     Probably would have to check with the people  
2     who supplied them to me.

3           Q.     Okay.   And who was that?

4           A.     That would be the office of Nick Pittman, I  
5     believe.

6           Q.     All right.   And how were they supplied to you?

7           A.     I think they were via e-mail.

8           Q.     Electronically?

9           A.     Yes.

10          Q.     And have you printed the reports out?

11          A.     Yes, sir.

12          Q.     All right.   Late yesterday I received an  
13     e-mail transmission indicating that it was your file  
14     materials in this case.   I tried to quickly review them.  
15     I did not see any expert reports in those materials that  
16     were provided yesterday.   Are they printed out and part  
17     of your file now?

18                   MR. PITTMAN:   Objection.   Form.

19          A.     The -- my expert reports or --

20          Q.     (BY MR. KERN)   The expert reports you're  
21     referring to that you received you said three weeks ago,  
22     perhaps.

23          A.     Oh.   No, they're not included in that.

24          Q.     All right.   And do you have the e-mail  
25     transmission on a computer somewhere where you would be

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1 so -- it's ARAS HD is what it is.

2 Q. And what you're saying is you may have used  
3 that just as a -- part of your analysis, but in terms of  
4 actual output, you don't have any ARAS HD output in your  
5 file, do you, sir?

6 A. No.

7 Q. And you're not intending to use any of that at  
8 trial, are you, sir?

9 A. No.

10 Q. The only output that you're using in terms of  
11 what's been computer aided or a computer tool would be  
12 the FX3, and it will be these diagrams that we'll be  
13 talking about?

14 A. Yes.

15 Q. All right.

16 A. The diagrams were also, you know, used for  
17 measurements, determining trajectory, angles and things  
18 like that as well.

19 Q. All right. Can you show me -- because, again,  
20 receiving materials last night, I tried to review them,  
21 sir, but can you show me any hand calculations that  
22 exist in your file materials, because I didn't see any?

23 A. I don't have any here.

24 Q. Okay. Well, where are the hand calculations?

25 A. I hope back at my office. I think back at my

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1 office.

2 Q. All right. And you say you hope back at the  
3 office. Tell me what you're thinking. You're saying  
4 that you set those aside, or you just did them on paper  
5 and that still may or may not exist?

6 A. I believe it exists. We recently moved, and  
7 we're still in boxes, and we have stuff all over the  
8 place. I've just got my office operational again and  
9 unpacking and getting organized in my office.

10 Q. All right.

11 A. So --

12 Q. When did you supply these materials -- that's  
13 the diagrams -- all of your file materials, when did you  
14 initially supply those to plaintiffs's counsel?

15 A. All of the files?

16 Q. Yes, sir.

17 A. Just a couple of days ago.

18 Q. So prior to just a couple days ago, is the  
19 only thing that you had ever provided to plaintiffs's  
20 counsel your report that we've marked as Exhibit 1?

21 A. Yes.

22 Q. And when you were getting ready for this  
23 deposition and you were gathering materials that you  
24 were going to supply to plaintiffs's counsel, did you  
25 look for these hand calculations?

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1 Q. You don't have the output in terms of all the  
2 points that you shot and how they correlate? You don't  
3 have that input or output file?

4 A. You're wanting --

5 MR. PITTMAN: Objection. Form.

6 A. I'm sure I have it. You're talking about the  
7 raw data?

8 Q. (BY MR. KERN) Yes, sir.

9 A. I'm sure I have it.

10 Q. Okay. Where would that be? Back at your  
11 office?

12 A. More than likely in my computer, uh-huh.

13 Q. All right. Does this reflect all of the data  
14 points which you shot when you inspected the 4Runner?

15 A. I believe it does. Well, no. No, it doesn't.

16 Q. Okay. Well, explain the change of your answer  
17 there. You thought that it did and then you said no, it  
18 doesn't.

19 A. Well, for this section, yes, it does, but I  
20 shot also down the side as well and down the other side  
21 as well. But for the purposes of determining this  
22 amount of crush, this is all I used. So that's what I  
23 provided.

24 Q. All right. Well, do you have other outputs  
25 similar to Exhibit 3 for any other aspect of the Toyota

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1 Q. All right. And is there any information  
2 specific to the type of 4Runner, the 2010 model series  
3 4Runner that's involved in this accident?

4 A. No.

5 Q. And what did you do with these StifCalcs?

6 A. Basically I used some information off of tests  
7 with similar type vehicles in order to determine the  
8 barrier equivalent velocity or the kinetic energy  
9 equivalent speed for the -- to match to the damage that  
10 I've determined in the displacement of the frame member  
11 back here.

12 Q. All right. And did you calculate how much  
13 kinetic energy was at work in this initial impact  
14 between the Volvo and the 4Runner?

15 A. I'm sure I did.

16 Q. Do you have that calculation with you here  
17 today?

18 A. I don't have any calculations today.

19 Q. All right. Looking at some of these other  
20 materials, did you use the Toyota crash test for any of  
21 your analysis in this case?

22 A. I looked at it.

23 Q. I mean, I know it's here, so I'm assuming you  
24 looked at it. But was there anything that you used in  
25 the way of information from this report in conjunction

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1 Q. All right. And how long of a period of time  
2 was it between impact, the initial impact between the  
3 Volvo and the 4Runner and the 4Runner and the Corolla?

4 A. Milliseconds. I'm thinking somewhere in the  
5 neighborhood of a tenth of a second.

6 Q. And did you do some hand calculations in that  
7 regard as well?

8 A. Yes.

9 Q. And those aren't with us here today, are they?

10 A. No.

11 Q. Okay. So then after this impact with the  
12 4Runner being kind of squished or positioned between the  
13 Corolla and the Volvo, what happens to the Corolla?

14 A. Well, the Corolla is accelerated.

15 Q. And what is its change in velocity?

16 A. I have anywhere between, I believe, 35 miles  
17 an hour and 38 miles an hour.

18 Q. All right. And at this impact, both with the  
19 4Runner into the Corolla and then when the Volvo tractor  
20 catches up to the 4Runner while it's still engaged with  
21 the Corolla, there is no evidence of fuel release or  
22 fire. Isn't that true, sir?

23 MR. PITTMAN: Objection. Form.

24 A. I don't know if there is or not. I'm not the  
25 fire expert. I haven't seen any.



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1 they're saying, and I disagree with that.

2 Q. Okay. Any other points of disagreement that  
3 you believe may be factual rather than opinion between  
4 yourself and Mr. Carr?

5 A. That's -- really at this point in time, I  
6 can't answer that 100 percent, but I can't think of  
7 anything right now.

8 MR. KERN: All right. Mr. Vick, I would  
9 have additional questions for you regarding your data  
10 and/or your equations, your hand calculations if they  
11 had been provided here today, but in view of them not  
12 having been provided, I'm going to go ahead and pass the  
13 witness at this time.

14 THE WITNESS: Okay.

15 EXAMINATION

16 BY MR. DAWSON:

17 Q. Good morning, Mr. Vick. My name is Don  
18 Dawson. I'm one of the attorneys representing Strick.

19 A. Good morning.

20 Q. And I have some very few questions of you  
21 probably based upon what you've been kind enough to  
22 bring today for us.

23 Mr. Vick, can you tell me how many times when  
24 either you were a state trooper or in private practice  
25 that you've investigated crashes at speeds in excess of

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1 every other deposition you've given where you've been an  
2 accident reconstructionist, is it not true that you have  
3 brought with you your calculations for the opposing  
4 lawyer to look at and question you about?

5 MR. PITTMAN: Objection. Form.

6 A. I have to say this is the first deposition I  
7 have never received a subpoena to appear at --

8 Q. (BY MR. DAWSON) All right.

9 A. -- with any type of request at all, so I  
10 figured that what I brought was actually generous.

11 Q. Okay. Well, let me go back to my question,  
12 though. Would you agree this is the first deposition  
13 you've ever given where you've served as an accident  
14 reconstructionist and you did not bring your calculation  
15 data to the deposition?

16 MR. PITTMAN: Objection. Form.

17 A. That's probably correct. There may be times  
18 where I haven't, but not that I recall.

19 Q. (BY MR. DAWSON) And would you agree, sir,  
20 that even though lawyers are not always the best  
21 mathematicians, they tend to like to go over your  
22 calculations with you to see how it is you arrived at  
23 your ultimate conclusions concerning such things as  
24 delta-v, kinetic energy and so forth?

25 MR. PITTMAN: Objection. Form.

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1           A.    Yeah, it's not unusual for you guys to want to  
2    see that.

3           Q.    (BY MR. DAWSON) All right, sir. Now you also  
4    talked about when you were at the scene on May 30, you  
5    did a total station of the crash scene. Is that right,  
6    sir?

7           A.    Correct.

8           Q.    And is that printout from total station -- I  
9    know it can get kind of large, but you can put it on a  
10   thumb drive. Is that here for us today?

11          A.    No, sir.

12          Q.    All right.

13          A.    Well, you have the -- you have the finished  
14   product of it. You have the diagrams.

15          Q.    I appreciate that. But what I'm saying if I  
16   wanted to go back and see whether or not your diagrams  
17   were properly plotted out, I would have to look at the  
18   total output of the total station. Correct?

19          A.    Yes.

20          Q.    And where is that data? Is that back at the  
21   new offices?

22          A.    It would be.

23          Q.    Okay. And did you -- before you came and  
24   brought the materials you did, did you discuss with  
25   counsel what is it I should bring for these guys to

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1 calculations which would allow you to determine the  
2 speed and trajectory of the vehicles and the angles of  
3 their impact. Is that correct?

4 A. At least to the extent that I'm comfortable  
5 with, yeah.

6 Q. And then goes on to say, I also used modeling  
7 software to predict the general location of the vehicles  
8 throughout the accident. You had done that prior to  
9 doing this report. Is that correct?

10 A. Well, you know, I guess a better term would be  
11 mapping software instead of modeling software.

12 Q. Fair enough.

13 So when you did this report on November 19,  
14 you had the information within your control where if you  
15 wanted to describe to the reader of this report the  
16 speeds, the trajectory and the angles of impact, you  
17 could have done that. Is that correct?

18 MR. PITTMAN: Objection. Form.

19 A. I believe I did that to an acceptable level.

20 Q. (BY MR. DAWSON) Not fussing with you about  
21 that.

22 A. You know, I just wrote the report as I saw  
23 fit, and that's how it was turned in. I didn't --  
24 didn't go into every specific potential possible area.

25 Q. Well, let's do it another way. If this report

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1 was sent to you and then someone walked up to you and  
2 said, Jeff, I want you to tell me the speeds, trajectory  
3 and the angles of impact of all the vehicles involved,  
4 could you answer that question from this report?

5 A. Well, you could at least answer some of the  
6 specific questions. You know, as far as every aspect of  
7 this collision, that's what I thought depositions were  
8 for.

9 Q. Okay.

10 A. If you had asked me at that point in time.  
11 And I have explained to you --

12 Q. And I appreciate that.

13 A. -- you know, what I've done and I've explained  
14 to you actually the impact to the back of the Strick  
15 trailer and the forces involved and how the ICC bumper  
16 failed.

17 Q. But would you agree with me, sir, that you  
18 could not have given the detail you've given today just  
19 from reviewing this report, Exhibit No. 1 --

20 MR. PITTMAN: Objection. Form.

21 Q. (BY MR. DAWSON) -- without your calculations  
22 and trajectory maps that you brought with you?

23 MR. PITTMAN: Same objection.

24 A. Sir, I don't have any problem with the way I  
25 wrote my report.

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1 Q. (BY MR. DAWSON) That isn't my question.

2 A. So --

3 MR. DAWSON: Move to strike as  
4 nonresponsive.

5 Q. (BY MR. DAWSON) My question is very simple.  
6 With this report only, would you agree that there is  
7 nothing in here that would allow a reader of the report  
8 to draw the conclusions, first of all, of the speeds of  
9 each of the impacts?

10 MR. PITTMAN: Objection. Form.

11 A. I would say you could. I disagree with you.

12 Q. (BY MR. DAWSON) Okay. And why do you  
13 disagree with me? What is there that would allow me to  
14 calculate the speeds from what's in this report that you  
15 came to the conclusions existed at the time you wrote  
16 it?

17 A. Well, I'm telling you what I calculated in  
18 speeds, so you don't need to calculate it.

19 Q. Right. If I want to double check it, if I  
20 want to do it for myself, is there anything in here that  
21 would allow me to do that, sir?

22 MR. PITTMAN: Objection. Form.

23 A. If you look at the diagrams and stuff, you  
24 should be able to.

25 Q. (BY MR. DAWSON) I agree with you, but those

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1           A.    I would have to look at my diagrams to give  
2   you that information.

3           Q.    What distance do you have between the Moody  
4   tractor and the Greene 4Runner at that moment of  
5   perception, the back of the Toyota 4Runner?

6           A.    Please restate that.

7           Q.    Yes, sir.

8                   At the moment of perception, what's the  
9   distance between the front of the Volvo tractor and the  
10   rear of the Greene 4Runner, according to your  
11   calculations?

12           A.    At the moment of perception, I have it  
13   documented in the diagrams. I would have to look at  
14   them.

15           Q.    It's in the diagrams, and you don't have any  
16   of the underlying calculations with you today. Is that  
17   correct?

18           A.    I don't have the calculations with me today,  
19   no. But you can see -- if you look at the diagrams, you  
20   can see that it's -- everything's there for you to  
21   calculate it.

22           Q.    Now you -- in response to a question  
23   Mr. Dawson asked you, you said that the perception  
24   reaction time that you used for your calculations was  
25   between 1.25 and 2 seconds. Is that correct?

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1 consulting work in Texas, since you retired from the New  
2 Mexico State Police, that the Texas Department of Public  
3 Safety actually has a separate sub agency or group of  
4 troopers who are specifically assigned the  
5 responsibility of commercial motor vehicle enforcement?

6 A. Yes, uh-huh. And I think the state of New  
7 Mexico is moving that direction. I think even though  
8 they're still separated, I think that they're really  
9 working more together than what they were whenever I  
10 retired.

11 Q. Right.

12 And you understand that -- from reading some  
13 of the depositions in this case, that there were two of  
14 those commercial motor vehicle enforcement troopers or  
15 DOT troopers for shorthand, who participated in the  
16 investigation of this accident. Correct?

17 A. I know at least one. I believe that was  
18 Baughman.

19 Q. Did you read Trooper Baughman's deposition?

20 A. I did.

21 Q. And did you also know that there was another  
22 DOT trooper who assisted him named Trooper Al Cummins.

23 A. You know, it sounds familiar, but I don't have  
24 a ready recollection of that.

25 Q. Do you recall having read Trooper Cummins's



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1 deposition?

2 A. I don't know if I did or not. I don't know.  
3 I don't recall.

4 Q. Did you happen to bring copies of any of those  
5 deposition transcripts with you today?

6 A. No.

7 Q. All right. Did you bring a copy of the DPS  
8 police file with you today?

9 A. Yes.

10 Q. Now you're aware, sir, that the Texas  
11 Department of Public Safety actually issued a formal  
12 Texas Peace Officer's Crash Report, sometimes called a  
13 form CR3, with regard to this accident. Correct?

14 A. Yes.

15 Q. And you know that that's a document that  
16 consists of six pages of that form that identifies the  
17 parties to the crash and the department's findings with  
18 regard to the crash. Correct?

19 A. It's a report level report.

20 Q. Right.

21 A. It doesn't go into reconstruction or anything.  
22 It's just basically a synopsis, and it identifies the  
23 people involved.

24 Q. You understand that the trooper -- the Texas  
25 DPS trooper who prepared this report, the gentleman

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1 be able to withstand a collision of at least 31 miles  
2 per hour from a vehicle like a Toyota 4Runner?

3 A. It should be able to.

4 Q. Okay. What's your authority for that, please?

5 A. Well, the standard itself. The Federal Motor  
6 Carrier Safety Regulation. You can pretty well  
7 calculate the amount of energy that goes into the crash  
8 test based on weight and velocity, and you can see if it  
9 exceeds or meets the minimum standard requirements.

10 Q. Have you done those calculations in this case?

11 A. Uh-huh.

12 Q. Do you have those calculations with you?

13 A. No.

14 Q. Have you at any point before today provided  
15 those calculations to plaintiffs's counsel?

16 A. No.

17 Q. Do you understand, sir, that the -- that the  
18 Fayard Dolphin tractor trailer assembly, that it left  
19 skid marks following the impact in this case?

20 A. Well, I know there's tire marks that are after  
21 impact and then they release and then there's light  
22 shadow marks to the final rest where the tractor is  
23 at -- where the trailer is at. I wouldn't necessarily  
24 call those skid marks.

25 Q. Did you measure those?

## Melanie McCarty

---

**From:** Aubrey "Nick" Pittman <pittman@thepittmanlawfirm.com>  
**Sent:** Monday, February 17, 2014 7:23 PM  
**To:** PITTMAN@THEPITTMANLAWFIRM.COM; DWASHINGTON@DWASHLAWFIRM.COM;  
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**Cc:** RHOWRY@HOWRYBREEN.COM; JCARLSON@HOWRYBREEN.COM;  
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Brian E. Mason; David Stone; Donna M. Struke; Jude T. Hickland; Julia A Campbell; Kelli  
Spencer; Kim Weiner; Kurt C. Kern; Melanie McCarty; NLWF-Robin L. Hart  
**Subject:** Jeff Vick's Calculations  
**Attachments:** Jeff Vick Calculations.pdf  
**Importance:** High

Counsel:

Mr. Vick was able to locate some of the calculations he discussed during his deposition. As you may recall, at his deposition, he indicated the notes had been misplaced in his recent move. The notes are attached.

Please contact me or Mr. Washington if you have any comments or concerns.

Regards,

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